

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
NOVEMBER 16, 2010

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Charlotte Hubbell at 10:00 a.m. on November 16, 2010 in the Ingram Office Building, Windsor Heights, Iowa.

COMMISSIONERS PRESENT

Charlotte Hubbell, Chair
David Petty
Susan Heathcote
Paul Johnson
Martin Stimson, Vice-Chair
John Glenn
Lorna Puntillo, Secretary
Dee Bruemmer

COMMISSIONERS ABSENT

Gene Ver Steeg

ADOPTION OF AGENDA

Motion was made by David Petty to approve the agenda as presented. Seconded by Marty Stimson. Motion carried unanimously.

APPROVED AS PRESENTED

APPROVAL OF MINUTES

September 21, 2010 Minutes

Motion was made by Lorna Puntillo to approve the September 21, 2010 minutes as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

October 19, 2010 Minutes

Page 26 – Due to technical difficulties and poor recording, Dee Bruemmer’s vote was inaccurately recorded. Change “Nay” to “Aye” vote.

Page 16 – Change Susan Heathcote had questions to the *EPC Subcommittee* had questions.

Page 31 – Change Wayne Gieselman comments to read as: *this is not a loop hole big enough for manure tankers to drive through to apply in the winter. This only applies to a few older facilities, that don’t currently have the storage capacity.*

Page 7 – add “quotations” to the word *may*.

Page 32 – Change Susan Heathcote’s comments to read as: *I believe it’s important that we honor the decisions of this commission and the agreement we reached at the July EPC meeting regarding the entire CAFO rule package.*

Motion was made by Susan Heathcote to approve the October minutes as amended. Seconded by Dee Bruemmer. Motion carried unanimously.

APPROVED AS AMENDED

DIRECTOR’S REMARKS

The Transition team for the Branstad Administration has been set up in the Mercy building on the Capitol complex. Each department is required to submit a 2 page summary for the Governor. The department is also in the process of preparing a transition booklet for the incoming director.

Lake Delhi Channel Stabilization – Construction has begun and is nearly finished. The Lake Delhi Recover and Rebuild task force will have a final report by December 1st. The Independent Panel of Engineers will be releasing their findings on December 1st at 1:30 in the Wallace State Office Bldg.

The Iowa Water and Land Legacy initiative passed with a relatively significant majority vote and this bodes well for those paying close attention to the natural resources in Iowa.

INFORMATIONAL ONLY

**SCHOOL BUS DIESEL EMISSIONS REDUCTION GRANT PROGRAM -
RECOMMENDATIONS**

Christina Iiams, Program Planner in the Air Quality Bureau presented the following item.

The Department requests that the Commission approve entering into seven (7) sub-grant awards for the School Bus Diesel Emissions Reduction grant program. The Department received 22 applications, 16 of which were qualified. After reviewing the applications, the top-scoring seven projects were selected for funding. If the selected awardees are approved by the Commission, a total of **\$343,115** in grant funds will be awarded. A total of \$301,000 in monetary match is being provided by the applicants (each applicant was required to provide \$43,000 in match).

Funding Source

Funding is provided by the U.S. Environmental Protection Agency (EPA)’s Diesel Emissions Reduction Act (DERA) in the amount of \$352,941. Funding is documented in EPA Award DS-98797001-2. The remaining \$9,826 not used by the Department for the sub-grant awards has been allocated for costs which include administration, supplies, and publicity.

The statutory authority for the DNR to enter into this sub-grant award is 455B.103 (5).

Background

The Department received a Diesel Emissions Reduction Act (DERA) grant from EPA to reduce diesel emissions from mobile sources in Iowa. In the past, the DNR Air Quality Bureau, in collaboration with the Iowa Department of Education, School Administrators of Iowa, the Iowa Pupil Transportation Association and the Iowa Association of School Boards, has focused on reducing childhood exposure to harmful diesel exhaust under the program named BEEP (Bus Emissions Education Program). Since its inception in 2002, BEEP has funded the installation of over 500 diesel oxidation catalysts on school buses, 8 school bus replacements, and supported the use of biodiesel fuel through previous grants provided directly by EPA to BEEP. Based on this successful track record, the Department chose to partner with BEEP for this DERA grant in order to create a competitive grant application program for school districts to apply for funds. Eligible applicants included any Iowa school district.

Children are one of the most vulnerable segments of the population effected by diesel pollution, which exposes them to doses of diesel air toxics (or hazardous air pollutants) as well as ozone and PM2.5. Through the competitive grant application, school districts applied for grant funds to reduce diesel emissions from their school bus fleets through bus replacement and diesel retrofits. Replacement of the dirtiest emitting bus (1993 or older) in school districts' fleets with a new bus with an EPA-certified 2010 engine translates into a 95 percent reduction of bus emissions per mile driven. Retrofits available under this grant funding included closed crankcase ventilation systems (CCVs) and diesel oxidation catalysts (DOCs) to put on buses older than 2003. CCVs reduce the amount of pollution in a bus cabin, which enters from the engine as the children enter and exit the bus. DOCs reduce the amount of pollution emitted out of the bus exhaust system. These retrofits are EPA identified technologies that significantly reduce air pollution from buses.

Information for the application process was made available to all Iowa school districts with the assistance of BEEP partners. A website link was created that was used as a one-stop location for access to general information, application forms and guidance, and a continuously updated frequently asked questions link. Applicants were given four weeks to apply for the funding. Project staff answered questions and provided general program information to potential applicants throughout the application period.

Grant Application and Selection

The grant offering required the applicants to partake in two activities to receive funding.

1. Purchase a 2010 (or newer) EPA-certified engine school bus that replaces a 1993 or older school bus in regular school route use. The new bus must not expand the current fleet. The replacement bus must perform the same function and operation as the bus that is being replaced.

Funding Requirements: The school district will be reimbursed a maximum of \$38,000 and is required to pay a minimum of \$43,000 (matching funds) for the new bus.

2. Purchase and install a combination of 20 diesel oxidation catalysts (DOCs) or closed crankcase ventilation systems (CCVs) on 2003 or older school bus engine models. If the

school district is not able to use the 20 retrofits allowance offered in the grant, the school district may apply for the number of bus retrofits that do qualify. Retrofitted buses should be those most likely to have the longest daily service life in the school district's bus fleet.

Funding Requirements: The school district will be reimbursed 100% of the cost and installation of the DOCs/CCVs.

Applications were due October 15, 2010. The evaluation committee (made up of BEEP partners – including a DNR representative) considered all information provided in the application; with the following factors being considered in the evaluation process:

- Strength of school district's idling reduction policy.
- Age and use of the bus to be replaced.
- Efforts school district makes to reduce air pollution.
- Programs/curriculum school district has for air quality and mobile source pollution and its effect on the Earth's life cycle and atmosphere.
- Location of school district. There are counties in Iowa that are considered to be areas targeted for emissions reduction; those counties are Benton, Black Hawk, Boone, Bremer, Clinton, Dallas, Grundy, Guthrie, Harrison, Jasper, Jones, Linn, Madison, Marion, Mills, Montgomery, Polk, Pottawattamie, Scott, Story, Van Buren, and Warren.
- Completeness and accuracy of fulfilling application requirements.

Twenty-two (22) applications were received; sixteen (16) of which were qualified. The following table identifies the top-scoring 7 sub-grant awardees and general information about the respective project and funding.

School District	Year Bus Replacement	# DOCs	# CCVs	Funding Award
Carlisle	1991	10	10	\$60,350
Linn-Mar	1990	20	0	\$57,950
George-Little Rock	1990	5	5	\$48,825
Wayne	1992	6	6	\$48,515
Belle Plaine	1993	4	4	\$45,250
Waverly-Shell Rock	1992	0	8	\$42,000
Camanche	1990	0	3	\$40,275

Motion was made by David Petty to approve the contract as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT - IOWA STATE UNIVERSITY FOR THE 2012 CLEAN WATERSHED NEEDS SURVEY

Chuck Corell, Water Quality Bureau Chief presented the following item.

Recommendations:

Commission approval is requested for a [2] year-service contract with Iowa State University of Ames, Iowa. The contract will begin on November 21, 2010 and terminate on December 31, 2012. The total amount of this contract shall not exceed \$129,540. DNR shall have the option to renew this contract long as this contract and any extensions do not exceed a six-year period.

Funding Source:

The funding source for this contract is from the Administration funds from the Clean Water State Revolving Loan Fund (CWSRF) which are 100% Federal funds.

Background:

Section 516 of the Clean Water Act (CWA) requires reports to Congress detailing States and national estimates and comprehensive studies on costs for compliance with the CWA.

The Clean Watersheds Needs Survey (CWNS) provides the basis for preparing the report and is a collaborative effort between States and US Environmental Protection Agency (EPA). The States collect and enter the needs data into a national database. EPA is responsible for preparing the report to Congress and to maintain the database. The CWNS take place once every four years.

The CWNS has served as a basis for Congressional allocation of funds for the Construction Grants program as established by the CWA in 1972, and for capitalization grants for the CWSRF program. Further, the CWNS can help States and EPA plan how they will attain and maintain CWA goals. The needs estimates and other information that are compiled for the CWNS can help agencies develop a comprehensive view of the projects and other activities necessary to comply with the CWA.

Purpose:

The parties have entered into this Contract for Iowa State University to provide support in conducting the 2012 Clean Watershed Needs Survey (CWNS). Support will include but not be limited to data collection, analysis, and compilation of data and reports as required to complete the CWNS.

Paul Johnson asked why Iowa State has been contracted to conduct this work. What are they doing that the Department can't?

Chuck Corell said that it's a matter of time and resources for the Department. We have the money for this research and data collection. And because we use Universities for this work, it is not required that we go out for competitive bid.

Motion was made by Paul Johnson to approve the contract with ISU as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED AS PRESENTED

SECOND CONTRACT AMENDMENT – ARCHEOLOGY SERVICES FOR THE STATE REVOLVING FUND PROGRAMS

Chuck Corell, Chief of the Water Quality Bureau presented the following item.

Recommendations:

Commission approval is requested for a second amendment to the not-to-exceed amount of the DNR's contract with Marina Consulting Corp. for archeological and architectural history services.

There are no other changes proposed to the contract.

Background:

This is one of the five master contracts that the DNR has with archeology and/or architectural history firms. When a survey is needed as part of the environmental review for a State Revolving Fund (SRF) project, the five firms are asked to bid. One is then chosen based on price, timing, or special expertise, and a contract addendum is executed for the needed work.

The five contracts were executed in April 2009 with a not-to-exceed amount each of \$60,000 worth of addenda. DNR's goal was to be able to spread the work among all the contractors to ensure that all of our projects could be completed on a timely basis.

In the first year of the contracts, large amounts of work ended up going to Wapsi Valley Archaeology, The Louis Berger Group, and Marina Consulting Corp., and those contracts were amended to add \$60,000 to each in November 2009. The extra workload resulted from an unanticipated number of new projects that were added to the SRF workload due to federal and state stimulus funding and from several unusually large addenda related to projects in culturally sensitive areas or with extensive project areas. The University of Iowa's Office of State Archeologist (OSA) has not bid on any projects. The fifth firm, The 106 Group, only does architectural history and cannot bid on archeological studies.

Most of the work in 2010 has gone to two firms, Wapsi Valley Archaeology and The Louis Berger Group. DNR amended their contracts in July 2010 to increase the not-to-exceed amounts

to \$240,000. However, Marina Consulting Corp. has stepped up recently to bid on more projects and the company principal has added staff. SRF staff feels that work could be more evenly split in the future between these three firms. Therefore, DNR would like to amend the Marina Consulting Corp. contract to increase the not-to-exceed amount from \$120,000 to \$240,000. This will give the DNR the ability to continue to use the master contracts to get surveys completed in a timely and cost-effective way for our SRF applicants.

Funding Source:

The funding for these contracts comes from the administrative accounts of the Clean Water and Drinking Water State Revolving Fund programs. The SRF programs receive funds for administration from federal capitalization grants as well as from the 1% origination fee charged on loans.

Motion was made by John Glenn to approve the contract as presented. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS PRESENTED

PUBLIC PARTICIPATION

NEILA SEAMAN, with the Iowa Chapter of the Sierra Club is pleased that the CAFO rulemaking regarding NPDES permitting is finally underway. However, the Chapter has concerns with the proposed rule as written in the Notice of Intended Action.

First, the Chapter opposes the provision in the proposed rule that allows an operator to voluntarily certify that it does not discharge or propose to discharge. EPA notes that the Clean Water Act is very clear that point source discharges from CAFOs are illegal unless the operator has applied for and obtained an NPDES permit. A CAFO that does not discharge or propose to discharge is not required to seek permit coverage and may be eligible for the no discharge certification. EPA also notes that any unpermitted discharge from a properly certified CAFO is still a violation of the Clean Water Act and terminates the certification.

It is our understanding that most producers believe that certifying will be as complicated and expensive as applying for a permit. Therefore, there is no need for the certification procedures in the rules. An operator should simply be required to obtain a permit.

The problem with the certification procedure is that an operator can obtain a non-discharge certification and then have a discharge in spite of the certification. He can then allegedly fix the problem that caused the discharge and obtain another certification. If he then has another discharge, he can again claim he fixed the problem and obtain another certification. This process can go on indefinitely without the operator ever having to obtain an NPDES permit. This makes a mockery of the Clean Water Act.

A state does not have to allow the certification procedure. It should not be in the Iowa rules.

A second issue that concerns the Chapter is that, according to EPA's "Implementation Guidance on CAFO Regulations," the EPA regulations require only CAFOs that discharge or propose to discharge to seek permit coverage and to clarify that a CAFO proposes to discharge if based on an objective assessment it is designed, constructed, operated or maintained such that a discharge will occur. The guidance document states that "A CAFO operator should make an objective assessment of the operation to determine whether the CAFO will discharge based on a site-specific evaluation of the actual design, construction, operation and maintenance of the facility."

EPA's guidance document contains a non-exclusive list of nine specific factors that demonstrate that the CAFO proposes to discharge. We believe this list should be included in the rule package as part of the definition of the term "propose to discharge." The proposed rule simply refers to the definition in the federal rule that a CAFO proposes to discharge if it is "designed, constructed, operated or maintained" so that a discharge will occur. This definition is too vague and does not give the DNR or the operator any guidance on when to apply for a permit. DNR argues that the EPA guidance document is just that – guidance – and if DNR includes these specifics in the rule, Iowa's rule will become more stringent than federal law. We believe if DNR is using the guidance document in other sections of the rule, there is no justification that the specific relevant factors would be more stringent. Furthermore, it is impossible to see how EPA guidance would make the Iowa rule more stringent than the federal rule. EPA guidance is obviously consistent with the rule.

We appreciate DNR's decision to require that only the Linear Approach will be accepted for the terms of a Nutrient Management Plan and heartily support that decision.

In summary, the Sierra Club Iowa Chapter objects to the voluntary certification provision in the proposed rule and asserts that, if it does remain, the specific relevant factors listed in EPA's guidance document be included in the rule.

PAM MACKEY-TAYLOR, with the Iowa Chapter of the Iowa Sierra Club addressed the proposed CAFO rules. The proposed rules eliminate any reference to operation permits as applied to CAFOs. We believe operation permits should apply to CAFOs the same as they do to other facilities and industries. In Chapter 63 and 64 of the rules, operation permits are required for any facility or entity that operates a waste disposal system which is not required to have NPDES permit. NPDES permits are required by the Clean Water Act in order to discharge pollutants into the water of the United States. There is absolutely no reason why CAFOs should not be subject to the same requirements. The DNR claims that these provisions are pre-empted by CAFO regulations. There's nothing in Chapter 459 that says it's the exclusive law related to CAFOs. Operation permits are a separate issue from the requirements in the federal rule. Point sources should have NPDES permits and CAFOs should be no different. A 2,100 head hog confinement produces as much waste as a city of 7,000 people and the hog waste are not treated. We would never allow a town to discharge sewage untreated without a permit and we shouldn't allow the CAFOs to discharge without a permit. There also needs to be a fiscal analysis. Iowa law does not state that the state can not be more stringent than federal rules, it

just says that if they are more stringent it needs to be stated in the Notice of Intended Action and a justification set forth for the more stringent rules.

NATALIE SNYDERS, ICCI member addressed Item 8 – NPDES rulemaking. We want DNR to issue Clean Water Act permits to factory farm facilities. It's about time that DNR and EPC start to take action. Industry is trying to stop these rules. We ask that you don't let them relax these rules. We ask that you move forward with

- 1) Broadening the definition of discharge so that every single factory farm in Iowa is required to have a NPDES permit
- 2) Strengthen the no discharge certification option so that factory farm operators can't self certify that they are in compliance
- 3) Stand against the corporate industry lobbyists regarding Chapters 63 and 64.

DAVID GOODNER, ICCI member submitted the following comments.

Iowa Citizens for Community Improvement (CCI) members have a number of concerns about the proposed rules, as currently drafted, to bring the state of Iowa into compliance with the federal Clean Water Act. The rules as currently drafted give undue special treatment to the corporate factory farm industry because they:

- Attempt to exempt factory farms from entire chapters of the Iowa code, specifically sections of the code in Chapters 63 and 64 that pertain to monitoring and reporting requirements that other industries in the state must comply with;
- Narrowly define "propose to discharge" language so that many factory farms with a high risk of runoff or water pollution can escape permitting requirements; and
- Allow an untrustworthy industry with a documented history of pollution, to "self-certify" their compliance with federal law.

These rules as currently drafted are weak and inadequate to protect and preserve Iowa's water because of the undue influence that corporate ag lobbyists like the Iowa Farm Bureau, Iowa Pork Producers, Iowa Cattleman's Association, and other big-moneyed special interest groups are exerting on this process.

We want to remind the U.S. Environmental Protection Agency (EPA), the Iowa Department of Natural Resources (DNR) and the Iowa Environmental Protection Commission (EPC that the mission of your agencies is to protect the environment, not to cut deals with the same corporate Ag lobbyists that bank-rolled Terry Branstad's campaign for governor.

This is your chance to stand up for clean water and to crack down on factory farm polluters and Iowa CCI members expect you to do the right thing and take it.

Issue number one – the corporate factory farm industry is not exempt from Chapters 63 and 64 requirements that apply to other industries

The rules, as currently drafted, state that the corporate factory farm industry is exempt from Chapters 63 and 64 when those chapters are "inconsistent" with Chapter 65. The term "inconsistent" is too vague and the industry will argue it allows them to ignore anything in Chapters 63 and 64 that otherwise applies to other industries, just because it isn't also written in

Chapter 65. The monitoring and reporting requirements in Chapters 63 and 64 are essential parts of the state's water pollution program, and must be applied equally across the board.

The first paragraph of the proposed rule specifically says that the Chapter 65 requirements for factory farms are "additional" requirements to those in Chapters 63 and 64 and that apply to all wastewater disposal systems. Iowa CCI members expect the contradiction to be resolved by deleting the "inconsistent" language. The final rule should clearly state that Chapter 65's requirements are "additional" to those in Chapters 63 and 64 that apply to all permit holders.

At the very least, the term "inconsistent" must be replaced with "contradictory".

Issue number two – definition of "propose to discharge" must be broadened

Every factory farm in Iowa is pollution rich and needs to obtain a Clean Water Act/National Pollution Discharge Elimination System (NPDES) operating permit. We are concerned that with this proposed rule the Iowa DNR is both avoiding the issue of what constitutes a "proposal to discharge" in Iowa and implying that its regulations will not even incorporate EPA's guidance document listing the non-inclusive conditions that demonstrate a proposal to discharge.

Iowa has the largest concentration of factory farms in the country and some of the most polluted water in the nation, with more than 542 polluted waterways. We've had more than 700 documented manure spills since 1995. Former DNR Director Rich Leopold told our members in Scott County last summer that the real number of manure spills could easily be ten times greater than official estimates because DNR lacks the field staff to adequately monitor and enforce existing state regulations. How many times rainwater, or freshly melted snow, has run factory farm manure off our farmland and into Iowa's rivers, lakes, and streams is anyone's guess.

Iowa CCI members have talked to both EPA and DNR about this on several occasions. The "accidents will happen" attitude of both state and federal regulators presumes that many spills are inevitable, yet in the same breath you argue that not all factory farms "propose to discharge". We expect this contradiction to be resolved.

Manure spills can happen at any time, anywhere, to any operator. All factory farms in Iowa "proposed to discharge" and we want all three agencies – the federal EPA and the state DNR and EPC – to push for strong rules that require all factory farms to apply for Clean Water Act/NPDES operating permits.

At a minimum, the draft rules should:

- Incorporate EPA's guidance document that lists the non-inclusive conditions that demonstrate a proposal to discharge.
- Establish a presumption that all medium and large factory farms dependent on highly mechanized manure management systems and/or concrete underground storage technology are at risk of equipment failure and therefore "propose to discharge".
- Establish a presumption that all medium and large factory farms that use liquid waste handling and/or apply manure on tiled fields, highly-erodible land, application fields above certain slopes, land with a P-index that says runoff is a medium or high risk, frozen and/or snow-covered ground, and/or karst soil all "propose to discharge".

Issue number three – no discharge certification option

Iowa CCI members' position is that you should NOT adopt the "no discharge certification" scheme and allow factory farm operators to "self-certify" that they are in compliance with the Clean Water Act. However, if you do, you should expressly disallow this option for any factory farm that has had a past discharge or that applies manure to tiled fields, highly-erodible land, application fields above certain slopes, land with a P-index that indicates runoff is a medium or high risk, frozen and/or snow-covered ground, and/or karst soil.

Issue number four – linear approach to nutrient planning

The DNR rules as currently drafted correctly prioritize linear reporting over narrative reporting requirements for Nutrient Management Plans because the linear approach is consistent with existing Iowa code and because it is more efficient for permit reviews and easier for citizens and the general public to compare waste application with land area when commenting on permits. However, Iowa CCI members are aware that the factory farm industry and their corporate lobbyists are pushing back on this point. We urge the DNR and EPC not to cave into corporate Ag pressure and to stand firm on this point.

Conclusion

Iowa CCI members were the ones that started this process in 2007 when we petitioned the EPA to strip DNR of its authority to regulate the federal Clean Water Act, and we will not sit idly by while the same corporate Ag interests that bankrolled Terry Branstad's campaign for governor work to shred badly needed environmental protections.

The ties between the incoming Branstad Administration and corporate Ag interests couldn't be clearer. This rulemaking fight is the start of a new front in the war for clean water and our quality of life, a war that pits the interests of everyday people and the environment against the interests of giant agribusinesses and corporate factory farms.

Iowa CCI members want to know which side you are on.

-----End of Public Participation-----

PRESENTATION FROM EPA – DAN BREEDLOVE – FEDERAL NPDES PERMITTING REQUIREMENTS FOR CAFOS

For a complete view of the presentation visit: <http://www.iowadnr.gov/epc/archive/10nov16h.pdf>

The main contents of the presentation included: How the Clean Water Act applies to CAFOs – Highlights of the Revised 2008 NPDES CAFO Regulations and Regulation Revision Deadlines.

Charlotte Hubbell asked Dan Breedlove from EPA how they define a "significant" discharge.

Dan Breedlove said that significant is not a discharge that's just barely over the standard. In my experience it's pretty obvious when you have a "significant" contributor.

Susan Heathcote asked for clarification on the voluntary certification for not having a permit. Are there steps that you need to go through in the voluntary process? If they don't have to go through an agency then how will we know?

Dan Breedlove said that the objective assessment needs to determine that it's properly designed and constructed with no winter application – they would need to have adequate storage capacity. If they plan or need to apply in the winter, then they are at greater risk for a discharge. The certification is only good and valid if they don't apply in the winter. If a facility proposes that they won't discharge, then you would be required to follow other measures. A facility needs to show that they are properly operating and maintaining equipment.

Susan Heathcote asked if there are guidelines for voluntary certification for facilities that will help them to check what maintenance measures are or if it's properly designed and constructed.

Dan Breedlove said that the requirements have been out there for years. I find it hard to believe that someone wouldn't know about the regulations. The information is online, you can call EPA or DNR permitting authorities. Implementation is as good as the permit requirements. It's all about education. Without a NPDES permit, a facility is not allowed to discharge at all.

Charlotte Hubbell asked if the proposed rule applies to any pollutant whether e-coli, bacteria or nutrients or, instead, does the rule only apply to pollutants from CAFOs.

Dan said this rule only covers pollutants from CAFOs.

Paul Johnson said it's hard for an owner and operator to predict a five year plan because landowner and weather are big changeable factors.

Dan Breedlove said that Iowa has adopted a lot of regulations that are incorporated by reference and that ensures the most stringent rule that you can adopt.

Marty Stimson asked if this will result in an increased workload for the DNR with NPDES permit applications.

Dan Breedlove said that there are about 2,000 facilities in Iowa that are not permitted. So yes there will be an increase. But it's an after the fact review of the validity of the no discharge certification if a discharge occurs.

Susan Heathcote said that there really needs to be assistance for producers.

INFORMATION

BLUFF LAND MINING

Bob Libra gave an overview on mining shale for natural gas. The shale is blasted with high water pressure and/or fine sand then the natural gas is extracted. A lot of natural gas is currently

coming from fracked shale. The question being asked is whether or not there will be an increased demand to mine shale. If so, there will be an increased demand to mine sand in Northeast Iowa.

Wayne Gieselman said that the mining issues are regulated by the Department of Ag. But the Department has jurisdiction on whether or not a sovereign lands permit is needed along with other permits such as storm water, dam construction, air quality, etc.

Pat Boddy said that there is an aesthetic value regarding this issue as well. The Department will be exploring what types of protections that Wisconsin is implementing. They do have measures in place that protect their bluff lands.

INFORMATION

REFERRALS TO THE AG – CHAMNESS TECHNOLOGY

Jon Tack presented the following information.

Chamness is an active, permitted, composting facility located several miles south of Eddyville. In addition to wood waste and yard waste, Chamness uses numerous industrial waste streams in its composting process. The facility has three wastewater (contaminated storm water) retention basins to collect and contain all runoff from the 16 acre, asphalt paved composting pad.

On November 19, 2008, the Department entered into an Administrative Consent Order with Chamness to address solid waste and wastewater violations at the Chamness facility. A plan of action to address storm water management issues was attached to the Order. These storm water control actions were incorporated into a required reviewed operating plan which was submitted by Chamness on December 15, 2008. The plan was approved by the DNR on April 8, 2009. The 2008 Order assessed a penalty in the amount of \$10,000.

Due to continuing violations after the entry of the 2008 Order. The 2010 Order addressed violations and response actions occurring through November 27, 2009. Violations documented in the 2010 Order included wastewater discharges, violations of minimum freeboard requirements in the wastewater lagoons, release reporting violations, and other violations of the applicable permit and administrative order requirements.

Since June 1, 2010, the Department has documented at least six severe overflows of the wastewater basins resulting in very significant discharges of wastewater into Palestine Creek, a water of the state. Water samples verified impacts to the creek. The Department has also documented violations related to minimum freeboard requirements and a failure to comply with the facility's operating plan. The Department has determined that a minimum of 600,000 gallons of wastewater were discharged to Palestine Creek. It is likely that the discharges exceeded 1 million gallons in total.

In stream measurements for biological oxygen demand (BOD), total suspended solids (TSS) and ammonia all exceeded safe levels in stream.

On November 1, 2010, DNR Field Office 6 received a complaint that run off from the application of material from the effluent ponds at Chamness was entering a nearby creek. The complainant stated that the water flowing in the stream was black. DNR Field staff went to the site and investigated. They observed a hose (6" diameter) discharging dark, foamy, odiferous liquid directly into a wooded draw which flows into the above mentioned stream. No other surface flow was observed in this draw. Water clarity upstream from the confluence was clear and flow was not observed.

When DNR spoke with the Chamness Operations Manager, he stated that he personally hooked the umbilical hose to the spray irrigator and that the umbilical hose must have come loose.

The spray irrigator and the location of the hose discharging when DNR arrived was approximately 100 feet apart, and there was no obvious evidence that the hose had come loose and worked its way down the hill.

At 6:00 PM, Jim Kacer captured video of the water flow downstream approximately 1 mile from the confluence of the draw and the water color was still very dark and odiferous.

Jon Tack said because of the repeated administrative orders and the most recent significant discharge to a water of the state, DNR requests that you refer this case to the Attorney General.

Jay Eaton, Attorney representing Chamness Technologies said that DNR's presentation was very generalized. You need to think about the information specifically. All of the 2010 information is not factual at all. I tried to call Jon Tack last week and the call was not returned.

First of all, the stuff was not pumped out of this pipe all day, it was 2 hours, not all day. Please listen carefully so you can determine what really happened.

Chamness is a leader in processing organic waste for sustainable and commercial levels. Food waste/produce (from Wal-Mart & Grocery stores) after it's broken down turns into an organic waste. Chamness takes and recycles waste from landfills and recycles it.

Gary Chamness showed photos of the site and what they recycle. Overall, the company has a good environmental record. We land apply good organic material. Chamness has not had any environmental enforcement against it. The only problem we've had has been at Eddyville, because it is developing and changing.

Jay Eaton said that Gary Chamness is a farmer and a leader in Iowa for economic development. He was also a member of the Vision 2010 Board for Governor Vilsack and served on the Recycling Iowa Board. The Eddyville facility has been an incubator for compost materials. A DNR SWAP grant was given to our industry and was repaid. A recycling award was granted to our facility. We are the only facility in the Midwest that is doing these types of recycling efforts.

The processes at Eddyville is an evolutionary process, things are being created, they are new technologies, we are learning as we go.

Chamness has entered into two consent orders with the DNR regarding odor and water runoff - the odor recommendations have been accomplished and complaints addressed. After the site inspection, Brent Early with the DNR stated that feedstock storage volume was dramatically reduced, odors were not offensive or noticed offsite. At this time, this facility has done a complete turnaround. Chamness Eddyville should be commended for their turnaround. June 8 2010 – second consent order. This concerned retention ponds, odors and the late reporting of requirements to the DNR. Gary Chamness wrote a full report to DNR and all of the items were addressed. It addressed every single item as requested by DNR. DNR has acknowledged that Chamness addressed these issues during an October 6, 2010 investigation. The inspector stated that it had not been raining, there was no standing water or crowding of materials and that Chamness was no longer storing materials for longer than a week. Piles noted in a previous inspection had been moved out. Chamness received a referral letter dated Oct 25, 2010 from the DNR Legal Bureau, which was the same day that we received a letter from their field office stating that Chamness addressed the issues. The facility is compliant. The conflicting letters show that DNR legal and DNR field office inspectors did not know what was going on at the site.

At this facility alone, they lost \$590,000 this past year. They are trying to do what is environmentally sound and right. 2,200 acres were acquired in Monroe and Woodward County as a back up plan so they could apply if necessary. In order to get this back up plan in place, \$1.4 million was spent so landowners could not deny application if the weather is bad. I'm not sure why we are here today. In regards to the odor complaints, there is no regulation on odor. There is one neighbor that complains and wants to sell his property for about \$8,000 per acre and land is only going for \$2,000-\$3,000 per acre in this area. Secondly, the water complaints – we have received Noah like floods this year. It's truly unusual. (Displayed a graph of precipitation over the last 60 years – rainfall tripled in amount.) The sewer plant was also under water in Eddyville. In regards to the recent discharge, the DNR just added this to their referral this month. It was not apart of the original referral. I tried to talk to DNR Legal and they never called back. Chamness self reported this discharge before the DNR was out on the site. The previous referral by the commission is still pending because of the lack of evidence. I would ask that you do not refer this matter right now because the facts are incorrect.

Gary Chamness said that DNR has been a partner with me on this project. This has been devastation for me because we have been addressing these issues as we are learning. We are committed to this project just like DNR was when they issued us grants. We do not want to be singled out because of the incident this summer. I ask that you do not refer this to the AG. If I come back in 6 months or a year, I ask that you make it difficult for me.

Jon Tack said that the event happened November 1. On November 6th, we received the letters and documents. I called Mr. Eaton's office on Monday morning(yesterday) and talked to his assistant and reconfirmed the time. I did not hear Mr. Eaton's concerns. The 2008 order directed Chamness to develop a plan to prevent the overflow of wastewater but in 2009 it

happened again and then again in 2010. Yes, I'm sure that they were in compliance on some days, but there has been violations and that's why we are here today.

Charlotte Hubbell asked about the 600,000 gallons discharge. Is that a cumulative total of all six overflows?

Kurt Levetzow said that 600,000 gallons was just for the month of June.

Paul Johnson asked about the hose. Do you believe it just ended up there discharging into the creek?

Jay Eaton said that the hose decoupled from the irrigator gun and ended up where it did. That's currently being investigated further.

Susan Heathcote said that there are a lot of facts here and I believe this would warrant a referral regardless of whether it's intentional or not. But it would be better for the Attorney General's office to sort through the facts then for us to determine what really happened. It's very complicated.

<i>Motion was made by Susan Heathcote to refer Chamness Technologies to the Attorney General's Office. Seconded by Marty Stimson.</i>

John Glenn said that this has been a wet time in southern Iowa. I look at the November 1st incident as a separate incident that should be addressed differently because it was after the fact.

Dee Bruemmer said that there are other alternatives to just land applying. Wastewater could be brought to municipalities.

Jay Eaton said that a lot of the municipalities would not take this waste because the BOD levels are too high for them. And the peak of flooding was in August. June and July were the highest rain months.

Jon Tack said that the November 1st incident should be apart of this referral. The message is to make this stop. There needs to be some action to take preventive measures when rain is anticipated. Alternatives need to be found for storing the waste.

David Petty said that rainfall was not just a little more than normal, it was extensive lasting for about 6 weeks. It doesn't make it right but it's a difficult issue.

Gary Chamness said that our dirt contractor was hired to start construction on another storage capacity but went bankrupt in the process. Maybe we wouldn't have had this discharge if adequate storage was in place. We have changed and improved our operations.

Lorna Puntillo asked if the violations would exceed \$10,000.

Jon Tack said yes \$10,000 would be easily justified.

Roll call vote went as follows: Paul Johnson – aye; Lorna Puntillo – aye; John Glenn – nay; Susan Heathcote – aye; David Petty – aye; Dee Bruemmer – aye; Marty Stimson – aye; Charlotte Hubbell – nay. Motion carried.

REFERRED

INFORMATION ON 2010 LAKE MONITORING BY DR. JOHN A. DOWNING , ISU

To view the PowerPoint presentation, please visit:

<http://www.iowadnr.gov/epc/archive/10nov16h.pdf>

INFORMATION

NOTICE OF INTENDED ACTION; AMENDMENTS TO CHAPTERS 60, 63, 64 AND 65, ANIMAL FEEDING OPERATIONS AND RELATED NPDES RULE CHAPTERS

As required by the Iowa General Assembly earlier this year, the proposed amendments update the Department's rules regarding confinement feeding operations to conform with 2008 federal regulations pertaining to NPDES permits. In addition, the proposed amendments include revisions to open feedlot rules and related NPDES rules as necessary to conform to the 2008 federal regulations, and several "housekeeping" type corrections and updates.

Ed Tormey, Chief Legal counsel for the Department said that even though we will miss the deadline, we are making a good faith effort and moving forward. EPA is aware of our timeframe. We are looking at March or April for a final rule. Public hearings will be after the 1st of the year.

Susan Heathcote asked about the state certification.

Wayne Gieselman said that our rules will be no more and no less strict than the federal requirements.

Randy Clark said that producer groups wanted clarification on Chapters 63 and 64, they also wanted the flexibility option, such as the narrative option.

Charlotte Hubbell asked why the linear option was chosen over the narrative option. Why not include both options?

Randy Clark said that MMPs currently use the linear approach so we decided to use that approach to keep everything consistent. EPA has indicated that the states can decide whether only one approach can be used or both.

Charlotte Hubbell asked if we could educate the DNR staff on how to use the narrative approach. Why not include both and let people have the option?

Randy Clark said that we will be conducting training for staff so I'm sure that's a possibility.

David Petty said that he favors the use of the narrative approach. Every year the yield is different and to make a change on a linear plan you have to hold public hearings and accept public comments. There's limited flexibility on the linear approach.

Dee Bruemmer said that she would agree to include both the linear and narrative approaches since she doesn't know which one is better than the other.

The Commission agreed to amend the following in order to gather public comment:

- 65.17(53) delete the wording "liner approach" and adopt by reference 40CFR 122.42 (e)(5)(i) and also (ii) to provide the option for both the liner and narrative approach.
- 65.112(12) delete the wording "linear approach" and adopt by reference 40CFR 122.42 (e)(5)(i) and also (ii).
- Keep self certification language.

Add EPA guidance documents as part of the information packet but not rule language.

Add the public hearings: Mason City, Des Moines, Kalmar, Sioux Center, Creston, Washington, and Decorah (Reference the previous hearing locations) Start the hearings at 6:00 pm except for the hearing in Des Moines at 1:00 pm.

DNR staff discussed the difference of operation permits and NPDES permits. Operation permits apply only to waters of the state and NPDES permits are waters of the U.S. If you are big enough to be a CAFO than you are required to have a NPDES permit if you discharge or propose to discharge to waters of the U.S. Iowa Code Chapter 459 only references NPDES permits, not operating permits. Chapter 60 defines what a NPDES permit is and it covers Chapters 61-69, therefore we are striking the NPDES permit definition and just referencing the NPDES definition in Chapter 60.

Randy Clark read portions of the EPA guidance document. The document has factors to consider but are not exclusive. Ed Tormey said that these factors are not definite and are subjective. The federal guidance document has not been vetted through the federal rulemaking process. Therefore it would be challenged if we adopted them because they are not part of the federal rules. The federal guidance documents do not provide any more information than we already follow.

The Commission agreed that the federal guidance documents should only be included as part of the information for producers but not included as part of the rulemaking package.

Charlotte Hubbell stated her concerns with self certification and constantly reapplying. It appears that you can just address the problem and then re-certify again.

Dave Petty said that they could still get a fine.

Randy Clark recited portions of the the 30 day review process for recertification from the federal regulations preamble.

Ed Tormey said if it's mis-management than it will be easier to determine the validity of self certification. There are only three options. They can self certify, do nothing or obtain a NPDES permit.

Randy Clark said if they have a valid self certification, it would protect them from the violation for not having an NPDES permit in the case of an accidental discharge but they would still have a violation for the discharge. If they do nothing they are not protected for the violation of not having a permit, they will have to obtain a NPDES permit and also address the discharge violation issue.

Motion was made by David Petty to adopt the amendments as outlined above. Seconded by Paul Johnson. Motion carried unanimously.

Motion was made by Paul Johnson to approve the amended final rule. Seconded by Susan Heathcote. Motion carried unanimously.

APPROVED AS AMENDED

MONTHLY REPORTS

The following monthly reports have been posted on the DNR website under the appropriate meeting month: <http://www.iowadnr.com/epc/index.html>

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report
6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

INFORMATION

GENERAL DISCUSSION

Catharine Fitzsimmons gave a PM 2.5 update.

Paul Johnson asked where the hot spots in Iowa are for PM 2.5.

Catharine Fitzsimmons said that air quality monitors are in place by areas that are in compliance. They are also downwind of larger cities. In areas of preconstruction, the baseline data will help in determining what their emissions should be and also note if compliance will be difficult to meet. I would look at our emissions inventory list to see what sources are emitting the most PM2.5 – power plants, coal fired boilers, agri-food processing plants and secondary sources from ammonia.

Wayne Gieselmann commented that the following topics will be added to the joint EPC/NRC meeting in January:

- Bluff land mining
- Budget – spending plan
- Rulemaking process
- Regulatory plan & enforcement plan
- Strategic plan
- IWILL

If Commissioners have other topics, please send them to Jerah Sheets.

The Iowa Policy Project will be moved to next month's meeting.

Paul Johnson passed out a copy of the new issue of the Journal from the Soil and Water Conservation. Drainage water management for water quality protection. General idea but maybe Matt Helmers could come back to discuss at a future date.

Lorna Puntillo and Marty Stimson will be working on the legislative report and will present the first draft at the December EPC meeting.

NEXT MEETING DATES

December 21, 2010

January 18, 2010

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson adjourned the meeting at 4:45 p.m., Tuesday, November 16, 2010.

<i>Motion was made by Paul Johnson to adjourn the meeting. Seconded by John Glenn. Motion carried unanimously.</i>
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Patricia L. Boddy, Interim Director

Charlotte Hubbell, Chair

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